

## **AMENDMENTS TO THE DRAWINGS**

The attached sheets of drawings include changes to FIGS. 1 - 55. These sheets replace the original sheets. FIGS. 1 - 55 have been reproduced with proper clarity and formatting as requested by the Examiner.

Attachment: Replacement Sheets

## **REMARKS**

This amendment is responsive to the Final Office Action mailed on March 31, 2009. Claims 26-28 and 45-51 are pending in the application and stand rejected. Claims 26, 46, and 47 have been amended. In view of the following remarks, Applicant respectfully submits that this application is in complete condition for allowance and requests reconsideration of the application in this regard.

### **Objections to the Drawings**

The Examiner has objected to the drawings indicting that new drawings in compliance with 37 CFR 1.121(d) are required as the previous drawings appeared to be copies and were not clear. New drawings have been prepared in accordance with the statute and are attached to this response. Applicant therefore respectfully requests that the objections to the drawings be withdrawn.

### **Rejections under 35 USC §112**

The Examiner has rejected claims 48-51 under 35 U.S.C. § 112 as failing to comply with the written description requirement. Claims 48-51 are dependant claims. The Examiner contends that there is no support in the specification for collecting the default information of treatment preferences from the practitioner and designing the custom appliances based in part on patient information and a plurality of individual patient; however, Applicant has amended dependent claim 48 to now recite "creating a database including the default information of treatment preferences from each of the plurality of orthodontic practitioners." Support for the claims as amended may be found at least in paragraphs [0048]-[0049]. Therefore applicant respectfully requests that the rejections of claims 48, and for 49-51 which depend therefrom, be withdrawn.

### **Rejections under 35 U.S.C. 103**

The Examiner has rejected claims 26-28 and 45-51 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,315,553 to Sachdeva et al. (*Sachdeva*) in view of U.S. Patent No. 5,991,728 to DeBusk et al. (*DeBusk*). Of these claims, claims 26, 46, and 47 are independent.

With respect to amended independent claim 26, the Examiner admits on page 3 of the Office Action that *Sachdeva* fails to disclose a “method comprising maintaining a database accessible by computer and containing data related to each of a plurality of practitioners, storing in the database, information identifying the practitioners and information relating to treatment plan options including preferences as to one or both of orthodontic prescription and orthodontic appliance hardware associated with the respective practitioners,” and relies on *DeBusk* to cure this deficiency. However, Applicant submits that *DeBusk* also fails to disclose or suggest maintaining a database accessible by computer and containing data related to each of a plurality of practitioners, storing in the database, information identifying the practitioners and information relating to treatment plan options including preferences as to orthodontic prescriptions as required by independent claim 26.

*DeBusk* is directed towards a system of tracking supplies used in various procedures, where there is a general template for a bill of materials (BOM) per each procedure. These general BOMs can be specifically tailored for each doctor who uses supplies not included in the general BOMs. The extra supplies are offered in Conditional Bundles, thus allowing a user to select ad hoc the supplies used by differing doctors. Thus *DeBusk* generally discloses an inventory management system that can be specifically tailored to include the hardware individual practitioners use in various medical procedures; however it fails to disclose treatment plans specifically tailored to individual practitioners, much less general treatment plan options to treat patients. The Examiner supports this view on page 8 of Office Action when concluding that “*DeBusk* teaches a database that store (sic) information relating to a plurality of practitioner (sic) regarding information relating to default preferences of preferred hardware on a selected procedure.” Independent claim 26 has been amended to store “in the database, information identifying each of the practitioners of the plurality and information relating to treatment plan options including default preferences as to orthodontic prescriptions” and not the “conditional hardware bundles” of the *DeBusk* patent.

The Examiner concludes that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify *Sachdeva* in view of *DeBusk* to track and minimize costs associated with the delivery of health care. But the Examiner provides no objective reason why one of ordinary skill in the art would be motivated to modify *Sachdeva* to include the

claimed subject matter of this claim. Therefore, Applicant respectfully requests that the rejections of claim 26, and claims 27, 28 and 45 which depend therefrom, be withdrawn.

The Examiner generally concluded in the rejection of claim 27 that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify *Sachdeva* in view of *DeBusk* in order to track and minimize costs associated with the delivery of health care; however the Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). The examiner has not articulated any reasoning or provided any rationale why combining these two references would obviously lead one to track and minimize costs associated with the delivery of health care. Applicant therefore respectfully requests the rejection of claim 27 be withdrawn.

With respect to amended independent claim 46 and its rejection under 35 U.S.C. § 103(a), Examiner admits on page 5 that *Sachdeva* fails to disclose "the treatment retrieved from a previously created and maintained database containing data associating a plurality of orthodontic practitioners with treatment plan options including default preferences as to . . . orthodontic prescriptions." Examiner then contends that this discrepancy is cured by the disclosure of *DeBusk*; however, Applicant submits, as set forth above with respect to claim 26, that *DeBusk* fails to disclose the prescription information database itself or retrieving the information pertaining to orthodontic prescriptions from the database. Thus, for the reasons presented above in regards to independent claim 26, Applicant respectfully requests that the rejection for claim 46 be withdrawn.

With respect to amended independent claim 47 and its rejection under 35 U.S.C. § 103(a), the Examiner admits on page 6 that *Sachdeva* fails to disclose "the database containing previously stored default information data . . . including default preference as to . . . orthodontic prescriptions." Examiner relies on *DeBusk* to filling this void in issuing this rejection; however, Applicant submits, as set forth above with respect to claim 26, that *DeBusk* fails to disclose or suggest the prescription information database itself or retrieving the information pertaining to orthodontic prescriptions from the database. Thus, for the reasons presented above in regards to independent claim 26, Applicant respectfully requests that the rejection for claim 47, and also claims 48, 49, 50 and 51 which depend therefrom, be withdrawn.

As a final matter, Applicant further notes that the remaining dependent claims recite additional features that further distinguish these claims from the references cited by the Examiner. However, in the interest of prosecutorial economy, these remaining claims will not be addressed separately herein.

### Conclusion

Applicant has made a bona fide effort to respond to each and every requirement set forth in the Office Action. In view of the foregoing amendments to the claims and remarks given herein, Applicant respectfully believes this case is in condition for allowance and respectfully requests allowance of the pending claims. If the Examiner believes any detailed language of the claims requires further discussion, the Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. The Examiner's prompt attention to this matter is appreciated.

Applicant is of the opinion that no additional fee is due as a result of this Amendment. Payment of all charges due for this filing is made on the attached Electronic Fee Sheet. If any additional charges or credits are necessary to complete this communication, please apply them to Deposit Account No. 23-3000.

Respectfully submitted,

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Date

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